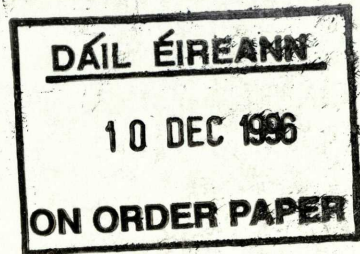


PN. 3254



**Inquiry in the Department of  
Justice into the Delisting of  
Judge Dominic Lynch from  
the Special Criminal Court  
Panel**

**Mr. Seán Cromien  
Dr. Edmond Molloy**

**18 November, 1996**

Houses of the Oireachtas

Ms. Nora Owen T.D.  
Minister for Justice

On Monday 11 November you requested information regarding the terms of reference

(a) To inquire into all of the cases referred to the Special Criminal Court Panel  
the terms of reference of the Special Criminal Court Panel  
the case of Judge Dominic Lynch  
written to the Special Criminal Court Panel



## Inquiry in the Department of Justice into the Delisting of Judge Dominic Lynch from the Special Criminal Court Panel

Mr. Seán Cromien  
Dr. Edmond Molloy

18 November, 1996

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Court Panel

Mr. Seán Cromien  
Dr. Edmond Kelly

18 November 1996

Houses of the Oireachtas

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Ms. Nora Owen, T.D.  
Minister for Justice.

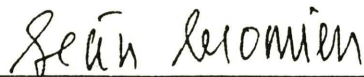
On Monday, 11 November you requested us to conduct an Inquiry with the following terms of reference:

- (a) To enquire into all of the circumstances surrounding
  - (1) the failure to communicate to Judge Dominic Lynch a Government decision of 1 August terminating his appointment as a member of the Special Criminal Court; and
  - (2) all other matters relevant to that failure.
- (b) To consider what procedural, administrative or other changes should be made in light of the outcome of the inquiry.
- (c) To report on the foregoing to the Minister within a period of 7 days.

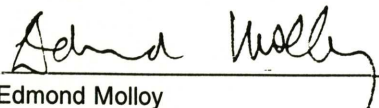
As required by these terms we submit our report to you today. As you will appreciate, it has necessarily had to be prepared very quickly and should be read in that light.

We wish to record that we received the fullest co-operation from the management and staff of the Department of Justice. We would like in particular to thank Mr. Valentine O'Donnell, Assistant Secretary in charge of Personnel Division. We also thank Mr. John Hurley, Secretary (Public Service Management and Development) in the Department of Finance, for allowing us to use the services of Mr. David Ring and Ms. Barbara Carrick. These two officers have earned our special gratitude for their dedication and hard work in the very difficult circumstances of preparing a report in such a short space of time. Ms. Beth Cullen of Advanced Organisation and Management Development Ltd. has also provided us with valuable assistance.

Finally, you will note that in our report we have given the names of the officers who handled the papers which we were investigating. We considered that this was necessary for your full information. The disclosure of these names to the Dáil and the media is, we consider, a matter of policy on which you will presumably decide in the light of precedents and the unusual circumstances of this particular case.



Seán Cromien



Edmond Molloy

18 November, 1996

Ms. Nora Owen, T.D.  
Minister for Justice

On Monday, 11 November you requested us to conduct an inquiry with the following terms of reference:

- (a) To enquire into all of the circumstances surrounding (i) the failure to communicate to Judge Dominic Lynch a Government decision of 1 August terminating his appointment as a member of the Special Criminal Court; and (ii) all other matters relevant to that failure.
- (b) To consider what procedural, administrative or other changes should be made in light of the outcome of the inquiry.
- (c) To report on the foregoing to the Minister within a period of 7 days.

As required by these terms, we submit our report to you today. As you will appreciate, it has necessarily had to be prepared very quickly and should be read in that light.

We wish to record that we received excellent co-operation from the management and staff of the Department of Justice. We would like in particular to thank Mr. Valentin O'Donnell, Assistant Secretary in charge of Personnel Division. We also thank Mr. John Harty, Secretary (Public Personnel Management and Development) in the Department of Finance, for allowing us to utilize the services of Mr. David Fling and Mr. Richard Conner. These two officers have shown our special gratitude for their dedication and hard work in the very difficult circumstances of preparing a report in such a short space of time. Mr. Brett Cullen of the Garda Organisation and Management Development Ltd. has also provided us with valuable assistance.

Finally, you will note that in our report we have given the names of the officers who handled the papers which we were investigating. We consider that this was necessary for your full information. The disclosure of these names to the Dáil and the media is, we consider, a matter of policy on which you will presumably decide in the light of precedents and the unusual circumstances of this particular case.

  
Brian Cronin

  
Edmund Molyneux

12 November 1992

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Houses of the Oireachtas



## Summary

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The Inquiry addressed:

- (1) the sequence of events which led to the failure to communicate the Government's decision to Judge Lynch. The results of our efforts to follow the 'paper trail' came to an unsatisfactory dead-end at crucial points, with key individuals unable to recollect important details, or failing to recognise the seriousness of vital correspondence.
- (2) the causes of failure, which included:
  - absence of a procedure for removing a judge from the Panel of Judges of the Special Criminal Court;
  - failure of the Department of Justice to adapt to major external forces and trends;
  - inappropriate institutional framework;
  - inappropriate organisational structure for the Courts Division and the Department of Justice as a whole;
  - very weak management processes;
  - work overload;
  - staff inexperience and poor job handover from previous incumbents;
  - other shortcomings in personnel policy and practice;
  - inadequate Information Technology support;
  - human error.

We take the view that the human error in this case cannot be explained away entirely as being due to the organisational, management and systems weaknesses.

Based on our investigation we make a number of recommendations:

- establish a simple 'fail-safe' system for delisting a judge from the Special Criminal Court Panel;
- institute a comprehensive redesign and documentation of procedures;
- harness potential of Information Technology;
- redesign the institutional framework;
- set up a proper structure for the Courts Division;
- develop a managerial ethos;
- significantly strengthen personnel policy and practice;
- confront individuals who are deemed to have failed;
- identify and act upon other issues needing immediate attention.

We conclude by asserting that, if the Report is not to be left to gather dust after a short flurry of activity, the following factors are crucial:

- sustained political will, reflected in financial and other support;
- time made available by the Department's senior and middle management;
- external support;
- openness on the part of the Department;
- not reducing the whole issue to one of staff resources;
- external review and public accountability;
- urgency and bias towards action.

In conclusion, the same urgency demonstrated recently with new initiatives in the Justice domain needs to be applied to reforming the Department of Justice itself.



## CHAPTER 1

# The Sequence of Events

---

The first task we set ourselves in undertaking this inquiry was to establish to the fullest extent possible the sequence of events which led to the failure to communicate to Judge Dominic Lynch the Government Decision of 1 August 1996 terminating his appointment as a member of the Special Criminal Court. To prepare ourselves for this task we examined written submissions furnished by the officials of the Courts Division of the Department of Justice and other members of the staff who were concerned with the papers relating to the matter. We also examined the relevant files of the Courts Division, which were made available to us readily by the Department. We then interviewed those who had furnished the submissions and a number of other persons whom we felt could help us with our Inquiry. These included the Minister for Justice, Deputy Nora Owen, and the Attorney General, Mr. Dermot Gleeson, S.C. In total we interviewed 14 persons. We are satisfied that there was adequate information before us regarding the role of Judge Lynch and contact with him confirmed that further elaboration was not needed.

Following representations by the Association of Higher Civil Servants and the Public Service Executive Union on behalf of the staff of the Department, we indicated that we had no objection to the presence of a trade union official at any interviews we might have with officers who presented statements to the Inquiry. In fact in most cases a trade union official was present. In the interests of natural justice we also indicated that we would be prepared to provide to officers interviewed extracts from the Report which referred personally to them and allow them an opportunity to give a response, if they wished, in advance of its submission to the Minister. This was done and the report indicates where responses were offered. Representatives of the two staff associations mentioned also came before us to make statements on general issues in the Department of Justice.



### **The Government Decision of 1 August**

We concentrated initially on examining the background to the Government Decision of 1 August 1996. This Decision originated in a letter of 2 July 1996 from Judge Lynch to the Minister for Justice asking to be relieved of his duties relating to the Special Criminal Court. Following receipt of this letter in the Courts Division, the Assistant Principal on the area of work, Official E, requested the Higher Executive Officer (Acting), Official J, on 4 July, to establish the procedure for having Judge Lynch replaced. He did this in the absence on annual leave of the Principal Officer, Official C, to whom the papers had been addressed on arrival in the Division.

On the same date (4 July), Official J furnished the note requested and Official E asked her to prepare:

- (a) a letter for the Private Secretary to the Minister to send to Judge Lynch acknowledging his request;
- (b) a draft Memorandum for the Government proposing that Judge Lynch and Judge Buchanan should be replaced on the Special Criminal Court with effect from 7 October.

Official E explained to us that he had included Judge Buchanan because he was aware that he was due to retire from the Circuit Court at the end of August. He suggested 7 October because it was the start of the Court term.

The draft Memorandum for the Government, as prepared by Official J and revised by Official E, was ready by 12 July. Official E took annual leave from 17 July to 13 August.

Official J had submitted the proposed letter of acknowledgement to Official E on 4 July and he passed it to the Minister's private office on or about the same date. It was returned by the Minister on 14 July with a request to see earlier letters, which were sought by Official J from Security Division.

Towards the end of the month the Minister indicated that she wished the Memorandum for the Government to be included on the agenda for the next Government meeting on 1 August. The Principal Officer, Official C, who had returned from leave, was asked to handle this. He was new to the Division, having been appointed to it only on 9 July, and in the



absence of the Assistant Principal, Official E, on annual leave was unaware that a draft had already been prepared. He therefore asked an Assistant Principal in another section of the Division, Official F of the District Courts Section, to prepare the Memorandum in Official E's absence. Official F had originally worked in the Special Criminal Court Section and was familiar with the procedures. She has emphasised to us that she continued to do her own work and did not assume the duties of Official E's section. The Memorandum she was requested to draft was concerned only with the removal of Judge Lynch from the Special Criminal Court and did not advert to the removal of Judge Buchanan. The effective date of 7 October which had been proposed in the original draft did not appear either.

The Memorandum for the Government, as prepared by Official F, was submitted by the Minister to the Government meeting of 1 August and the Government decision of that date indicated that:

- (a) Judge Dominic Lynch was removed from the Special Criminal Court;
- (b) Judge Kevin Haugh was appointed to the Court.

The effective date for both moves was 1 August.

The next matter to which we turned was an examination of what happened to the Government decision when it arrived in the Department of Justice. It was received in the office of the Private Secretary to the Minister, Official G, from the Cabinet Secretariat on 2 August. Official G was on annual leave but the decision was photocopied and, in accordance with normal procedures, was circulated as follows:

Secretary (Official A): marked "for information"

Programme Manager (Official M): marked "for information"

Assistant Secretary (Official B)

Principal (Official C)

Assistant Principal (Official F).

The arrival of a Government decision in a Department is a signal to that Department that any consequent action should be put in hands immediately. The critical question for our Inquiry, therefore, was to establish what had happened to the three copies of the decision which



were furnished to the Courts Division, viz. those given to Official B, Official C and Official F. It has to be said straight away that the result of our enquiries here was very unsatisfactory.

We first asked Official B about the copy which he received. Official B explained that he was Acting Assistant Secretary of the Courts Division and had held this post from January 1996. His tenure as Assistant Secretary is due to expire on 31 December 1996, when he will resume as a Principal Officer (Higher). Besides the Courts Division, he also had responsibility for three other divisions of the Department, viz., Immigration and Citizenship, Finance and Secretariat. These generated an enormous volume of work, instances of which he gave to us. He had not become involved at any point in the case of Judge Lynch; in the normal course of events he would have seen the draft Government Memorandum but did not as he was on annual leave at the time. On receipt of the copy of the Government decision, on his return from annual leave on 15 August, he noted its contents and the fact that copies already had been sent to Official C and Official F, of the Courts Division. He expected that the division would follow the decision through with the appropriate action. He therefore retained for reference the copy of the decision which had been sent to him.

We enquired from Official C what he had done with the copy of the decision which he had received. It will be recalled that he was only a few weeks in the Division. He was therefore, as he explained to us, unaware of what procedure, if any, the Courts Division needed to follow in relation to the decision. As the Assistant Principal, Official E, who was responsible for this particular area of work, was on leave, Official C passed it to one of the more junior officials of the section. He could not recollect who that person was but he felt it would have been one of the staff with experience and in whom he had the utmost confidence. He named three officers of the section as the possible recipients. We interviewed these three persons in turn and each of them maintained with great earnestness that they had absolutely no recollection of having been given the decision.

We next asked the third recipient of the decision what had happened to her copy. This was Official F. She had been drafted in to help with the preparation of the Memorandum and had emphasised to us that she was not asked to take over Official E's section in his absence. She was heavily engaged in the work of her own section. She told us that she



gave her copy of the decision to the section concerned straight away. She could not remember to whom she gave it but she mentioned one name, saying that to the best of her knowledge she gave it to this person but she could not categorically state this. We enquired of this person, who was one of the three mentioned by Official C as possible recipients, but were told quite categorically that neither copy of the decision had been received by that person.

In asking our questions, we pointed out to all concerned that in fact a copy of the decision was on the file and therefore must have been handed to someone in the section. No one, however, as we have said, could recollect receiving it nor could either of the two senior officers, i.e. Official C and Official F, remember precisely to whom they had given their copy. In this unsatisfactory way, the trail in relation to the Government Decision ran into the sand. No action was taken on it. The two senior officers, who had received copies had passed them to the section in good faith, assuming that any necessary action would be taken, but for different reasons any instructions they gave were not followed up. One of these officers was new in the Division and the other had only been drafted in temporarily to do a specific job. The junior officer who received the decision — whoever that was — may not, in the absence of instructions from a more senior person, have realised the significance of the document.

#### **Attorney General's Letter of 2 October**

We next investigated the circumstances surrounding the receipt of the letter written by the Attorney General, Mr. Dermot Gleeson, S.C., to the Minister for Justice on 2 October. This letter was received by the Private Secretary to the Minister, Official G, on 3 October. Official G explained to us that an enormous volume of letters was received in the private office of the Minister every day. When a letter such as the one from the Attorney General came in, requesting the Minister to ascertain certain information from the Department, he felt that the appropriate way to deal with it was to obtain the information from the section concerned before showing the letter to the Minister. Otherwise she could legitimately ask him what the position was and he would not be aware of it.

He consequently sent the Attorney General's letter to the Principal in the Personnel Division, Official D, because that Division usually dealt with judicial appointments. Official D told us she received it on 7 or 8



October. On reading it she realised it was a matter for the Courts Division and passed it to Official C of that Division, who received it on or around 9 October. He gave it to his subordinate officer, Official E, who received it on or around 10 October.

Official E told us that he was engrossed in, inter alia, preparing replies to twelve Dáil Questions which had to be answered orally by the Minister on 15 October. He decided to wait until the Dáil Questions were dealt with before taking action on the Attorney General's letter. On 14 October Official J, the Acting Higher Executive Officer in the section, returned from leave and on the following day Official E gave her the Attorney General's letter.

He explained to us that he instructed her that if the Courts Division had not already done so they should inform Judge Lynch and the Circuit Court by letter immediately of Judge Lynch's removal from the Special Criminal Court. He also requested Official J to prepare a Memorandum for the Government for the removal of Judge Buchanan from the Special Criminal Court, because he had reached the age of retirement in the Circuit Court of which he had been a member.

On 15 October, Official J gave Official E the draft letter to Judge Lynch and the President of the Circuit Court which he had requested, together with the draft Memorandum for the Government. Official E told us that between that date and 22 October the drafts passed between him and Official J as he revised them. Specifically he made amendments and passed them back to Official J on 16 October; Official J resubmitted the letters and Memorandum to him on 22 October; and he further amended them and passed them back to Official J on 22 October. The final draft was given to Official E on 6 November and the letters issued on 7 November.

We asked Official C and Official E why they had not been struck by the urgency of the letter from the Attorney General. Official C explained that in view of the terms of the letter he did not consider it called for any urgent action.

Official E explained that when he read the Attorney General's letter he formed the view that the Attorney General was requesting the Minister to ensure that Judge Lynch was formally informed of his removal so that he could indicate to Judge Kenny that he was available for other work.



It did not strike him at the time that the Registrar to the Special Criminal Court had not been informed of the decision to remove Judge Lynch from the Court or that there was no procedure in place for informing the Registrar that a judge had been removed from the Special Criminal Court or that Judge Lynch had somehow not been informed informally of the Government decision.

Because of the emphasis placed on the wording of the Attorney General's letter we have obtained his approval and that of the Minister for Justice to include it in this report. It reads as follows:

*"2nd. October, 1996.*

*Mrs. Nora Owen, T.D.,  
Minister for Justice,  
Office of the Minister for Justice,  
72-76 St. Stephen's Green,  
Dublin 2.*

*Re: Judge Dominic Lynch*

*Dear Nora,*

*I recollect that Judge Lynch was removed from the Special Criminal Court and replaced by Judge Haugh, by a Government decision I think, at the end of July.*

*In a recent conversation with Judge Harvey Kenny, who was reviewing the availability of different Judges for different work, he indicated to me that the impression is still abroad amongst the judiciary that Judge Lynch is still on the Special Criminal Court. Can I ask you to ascertain whether in fact the decision to remove Judge Lynch has been notified*

*(a) to Judge Lynch*

*(b) to the President of the Circuit Court.*

*If in fact this has happened, I will be free to write to Judge Kenny confirming that Judge Lynch is no longer a member of the Special Criminal Court.*

*I regret having to trouble you on this matter.*

*Yours sincerely,*

*Dermot Gleeson S.C."*

Our reading of the wording of this letter, which after all came from the Attorney General and referred to a Government decision, would lead us to infer that urgent action was required upon it.

### **Letter of 10 October from Judge Lynch**

An undated letter marked "Personal" was sent to the Minister for Justice by Judge Lynch saying that he had not received a reply to his letter of 2 July 1996 and asking her to let him know about his position in the Special Criminal Court. From his records he was later able to say that the date on which he sent the letter was 10 October. No action was taken on this letter, which was discovered on the file in the Courts Division and its existence made known to the Minister on 7 November.

There is a mystery about this letter which we have been unable to resolve. We have been informed that because it was marked "Personal" for the Minister it was delivered to the Minister's constituency office, where it was opened by Official N, Personal Assistant to the Minister. She told us that on opening it, she took it out of the envelope to read, because it was not on Court-headed paper, which is why she recalled it. She stated that the normal practice was to hand it over to the Minister's Private Office. She had no idea how it got on to the file in Courts Division, as she would not have delivered it personally to that Division. She does not recall to whom she might have given it in the Minister's Private Office. The Private Secretary has indicated that he has no recollection of having received the letter in question and that his staff have no recollection either. At this point it disappears from view and no one whom we have questioned has any recollection of having seen it.

The procedures for registering, channelling and tracking mail addressed to the Minister seem to us clearly inadequate and to require reorganisation.

### **Attorney General's Letter of 1 November**

On 1 November the Attorney General wrote to the Minister for Justice again asking whether Judge Lynch was still on the Special Criminal Court. The 1 November was a Friday and the letter reached the Minister's Office on the following Tuesday, 5 November. The Minister saw the letter that afternoon as she was on her way to a meeting in Dublin Castle. She phoned Official C of Courts Division, who understood she was enquiring about the appointment of another (named) Judge to the Special Criminal Court. He pursued enquiries about this and on 6 November gave word to the Minister's Office that nobody was aware of a decision to this effect in the case of the Judge named. That morning



he was told that the decision related to Judge Haugh, the Judge who was to replace Judge Lynch on the Special Criminal Court. He contacted Official E of his Division about this and learned that letters were about to issue.

Later that afternoon, following contact between the Office of the Director of Public Prosecutions and Official C, Judge Lynch was handed a faxed copy of the notice in Iris Oifigiuil of 9 August which showed that he had been delisted from the Special Criminal Court with effect from 1 August. This was his first notification, formal or informal, of his removal from the Special Criminal Court.

#### **Remarks in Dáil about Mr. Barry White, S.C.**

On 12 November Deputy Charles McCreevy made a statement in the Dáil during a debate on the issues which we are investigating to the effect that Mr. Barry White S.C. had contacted the Department of Justice and said that he had learned that Judge Lynch had been removed from the Special Criminal Court and was still sitting as a member of that Court.

Following this allegation, we asked all the Department of Justice staff whom we had interviewed whether they had any contact or communication with Mr. White. We received negative replies in all cases. We then spoke to Mr. White himself. He told us categorically that he had not on any occasion approached the Department of Justice for the purpose mentioned.

#### **Appointment of Judge Haugh**

The warrant for the appointment of Judge Haugh to the Special Criminal Court was received in the Minister's Office on or around 27 August from the Cabinet Secretariat and was handed to a Higher Executive Officer in Personnel Division (Official H) on that date. In accordance with the procedure for appointments handled by that Division, Official H phoned the County Registrar of the Courts (Official K) and arranged to send the warrant to him in the absence of the Registrar of the Special Criminal Court (Official L) on annual leave. The warrant was sent through the Department's messenger service on 6 September and was subsequently given to Official L on his return from leave.

We have been informed that, as will be explained later, there is no immediate urgency in dealing with the warrant for an appointment to the Special Criminal Court, unlike the arrangements for appointments to the other courts. Once the Cabinet decides on an appointment with effect from a particular date, the person becomes a member of the Court on that date.

The passing of the warrant to Personnel Division by the Minister's Office was a minor administrative error, since it should have been given to the Courts Division. That Division, as mentioned earlier, handles appointments to the Special Criminal Court while Personnel Division handles all other judicial appointments. The error is understandable, given the volume of work which is handled daily by the Minister's Office and also the unsatisfactory administrative arrangement of having two Divisions dealing with judicial appointments. However, it has been pointed out to us that the misdirection meant that it resulted in the appointment of Judge Haugh being divorced from the delisting of Judge Lynch, as Personnel Division were not aware of the Government decision to this effect. It would be purely speculative on our part to attempt to assess whether this had any significance for later developments.



## CHAPTER 2

# The Causes of the Failures

---

Having documented the sequence of events and the several critical points at which there was a failure to carry forward the process of communicating the Government decision to Justice Lynch, we then asked 'What caused these failures?' We have found that the causes are both direct and indirect.

### **(a) No System in Place**

While many factors have contributed significantly to the failures, the absence of any system or procedure for handling the delisting of a member of the Special Criminal Court is perhaps the most important single explanatory factor. To explain this we need to distinguish between the handling of appointments and delistings to this Court and those of the Circuit, High and Supreme Courts, which for our purpose we designate the 'other courts'.

In the cases of appointing or promoting judges to the other courts it has never been the practice of Department of Justice officials to communicate directly to the persons concerned that they have been appointed or promoted. It appears to be done informally. A clearly defined process is followed, however, once their warrant is issued. Within twelve days of issue they must be sworn in by the President, or else their appointment lapses.

When judges of these courts leave the bench it is usually on reaching the age of retirement, in which cases the Personnel Division of the Department of Justice communicates in advance regarding their pensions, etc. No letter is issued from the Department of Justice terminating their role as judges.

The procedures, such as they are, for the Special Criminal Court are quite different. We have been advised that once the Cabinet decides on an appointment with effect from a particular date the person becomes a member on that date. There is no immediate urgency on the issuing



of the person's warrant; the warrant in these cases is simply an official certificate or testimonial of their appointment. The person appointed tends to learn of their appointment in an informal way.

With regard to the termination of a judge's role on the Special Criminal Court, the termination takes effect on the day of the Government decision unless otherwise stated in that decision. (In the case of Judge Lynch, termination was to take effect on August 1 1996, the day of the Government decision.)

There is no system in place to communicate to judges that their role in the Special Criminal Court has been terminated. Critically there is no system in place and apparently no precedent for delisting a judge of the Special Criminal Court who was returning to the Circuit or other Court. Previous cases involved either promotion to the Supreme Court or retirement. The absence of a clear procedure is clearly evident in the case of Judge Liam Hamilton who was appointed Chief Justice in September 1994. It appears to have taken from that date to May 1995 before he was delisted and that only following several requests from him to be formally taken off the Special Criminal Court panel of judges.

Briefly, then of all four transactions, i.e. appointment/promotion or delisting of judges of other courts and the appointment or delisting of a member of the Special Criminal Court the most critical, from the point of view of potential legal consequences, namely the delisting of a member of the Special Criminal Court, was least well served by a formal process or precedent.

Furthermore, we gather that written procedures do not exist in many other areas of the Department, a serious concern in a Department where a failure to act properly can have extremely serious consequences. On a daily basis the Department of Justice handles numerous transactions where a mistake or forgetfulness can have enormous negative consequences.

In addition to this vital procedural gap several broader factors contributed to the failures in this case, which we now go on to discuss.

**(b) Failure of the Department of Justice to adapt to major external forces and trends**

For various reasons the Department of Justice do not appear to have adjusted quickly enough to a number of forces or trends which impacted



upon the Department. By adjustment we mean adaptation of internal structures, deployment of adequate human resources (suitably skilled), development of new procedures, use of information technology and other organisational changes. The principal forces and trends were:

- (i) A general increase in crime and lawlessness.
- (ii) An enormous growth in a short period in European work, a development greatly accentuated during the E.U. Presidency.
- (iii) The demands on senior staff of work on the Northern Ireland Peace Process and related activity.
- (iv) A heightened awareness among the general public of issues such as personal rights and crime, with a consequent increase in demand for information by members of the Oireachtas and the media.

The only significant way in which these demands were addressed internally within the Department of Justice was to seek some additional resources. The additional resources actually provided were entirely inadequate in the circumstances. With or without additional resources, however, the other necessary organisational and systems changes were not made. The people in the Department simply coped as best they could.

**(c) *Inappropriate Institutional Framework***

We have formed, in the short span of our work in this Inquiry, a view of the institutional framework of the Department of Justice similar to that formed by several other groups who have examined it. The Working Group on a Courts Commission recommended in its April 1996 report, *Management and Financing of the Courts*, that an independent Courts Service be established. Other parties who have reflected on the institutional framework, including the Department's own staff in its Strategic Management Initiative, the Association of Higher Civil Servants and the Bar Council, have put forward similar views. In addition to the institutional changes already advocated and announced this week, concerning the establishment of a Courts Service and a separate Prisons Board, the scope of the Department's other activities and the institutional structures appropriate to the conduct of these activities need to be fundamentally addressed. The relevance of the institutional framework to the matters being investigated by the Inquiry is that an inappropriate framework contributes significantly to work overload at



senior levels, delays in decision-making, poor controls, faulty external communications and so forth.

**(d) *Inappropriate Organisation Structure for the Courts Division and Department of Justice***

The Courts Division of the Department of Justice is supported by the Personnel Division, the Finance Division and other units within the Department. Best practice in organisation design would be to situate support resources for a major division within that Division. In this particular case an example of the impact of faulty structure was that an experienced person in the Personnel Division handles the appointments of judges to other Courts but her expertise was not automatically available to the less experienced people within the Courts Division who handle the Special Criminal Court. (Her expertise was of course willingly given on request.) More integrated structures are vital, especially in a culture where there appears to be a strong tendency to deal only with what is strictly 'my own job'.

It appears that the top management structure, i.e. Secretary and five Assistant Secretaries is greatly overloaded. Some Assistant Secretaries seem to hold portfolios of work that are virtually incompatible such as Northern Ireland affairs and Personnel. The recent announcements of devolution of Prison, Courts and other activities from the Department should be taken as an opportunity to examine portfolios and workloads in the top management structure.

Of particular importance in a Department such as the Department of Justice is the need for structural flexibility. The work of the Department is highly unpredictable in its nature and can peak very quickly in a particular area. An adequate organisational response in such situations is the marshalling of resources from across the Department into a temporary structure or to support an existing unit. No such flexibility exists to any significant degree, except perhaps for the virtually unique circumstances of the Presidency of the European Union.

**(e) *Very Weak Management Processes***

By management processes we mean the rhythms of planning, goal-setting and review whereby the head of any unit meets his or her staff to address priorities, initiate changes in systems, motivate staff, ensure adequate external communication, track budgets and so forth. While there may be some 'pockets' within the Department where such



disciplines exist, the pattern of activity of senior and middle-ranking people typically does not include such managerial disciplines. Senior people simply do not have the time to manage their divisions, nor do they have sufficient time to think about policy and strategy. The significance of such disciplines in this case is that they would have contributed to continuity and have prompted the identifying of key issues, such as the Judge Lynch delisting. Also the lack of genuine delegation leads to the kind of delays which occurred when a response to the Attorney General's letter of October 2 was being prepared.

**(f) Work Overload**

People in senior and middle-ranking positions who were interviewed in this Inquiry have an excessive workload, for example:

The Acting Assistant Secretary in charge of Courts Division is responsible for a wide area of activity which includes, beside the Courts, Immigration and Citizenship, the Secretariat (which deals with, for example, Departmental co-ordination, Coroners, Censorship, Auctioneers and other matters) and the Finance Division, which under decentralisation has been located in Killarney.

The work of the Principal of the Courts Division has greatly escalated, for example with the advent of the Family Courts and the appointment of approximately twenty additional judges over the last 12 months. During the period under review he had other responsibilities temporarily from his previous position in another area of the Department. For example, he continued to work as Secretary to the Working Group on a Courts Commission, spending roughly one day per week on this.

The Assistant Principal dealing with the Special Criminal Court was given a number of extra responsibilities in Courts Administration. In addition he was also assigned responsibility for the Courts and court offices, the production of information booklets for the benefit of court users, the operation of video link and implementation of financial recommendations from the 1992 Gleeson Report. He represents the Department on a number of committees.

The significance of such patterns of work in this particular case is obvious. For example, with such pressures there is a constant danger



of important correspondence slipping through the net or of being passed to people who are too inexperienced or junior to take proper action.

The same pattern seems also to exist at lower Executive and Clerical levels, where, we were told, priorities can change from hour to hour and where they still have to ensure that the 'normal' work of the Courts Division continues to be done.

***(g) Staff Inexperience and Poor Job Handover from Previous Incumbents***

Several of the key people in this affair were appointed relatively recently from sections other than the Courts Division. Also, of two very experienced people in the Courts Division, who would most likely have spotted the seriousness and urgency of the correspondence, one had retired and the other had taken a career break just prior to these events. In the normal course of events a retiring person would be available for an 'overlap period' to induct the new person into the position. In this particular case such induction apparently did not take place for some of the key new people.

The Assistant Secretary to whom the Courts Division reported was appointed on an acting basis in January 1996 and, critically, the Principal of the Courts Division was appointed only on the 9 July 1996. In this context it is hardly surprising that when the Principal received the notice of the Government's decision he was unaware of any procedures for handling such matters and so passed on the correspondence to other staff in his section.

At the point when the Principal needed to pass on the correspondence because of his own lack of familiarity with the relevant processes, his Assistant Principal was on annual leave and he therefore passed it on to one of three more junior staff.

Because of the pressures of E.U. business and the need, for example, to deploy experienced people in Brussels up to fifty people in the Department of Justice were moved and replaced by people newly promoted or "acting up" in the vacant positions.

Briefly then the inexperience of key people, combined with the absence on leave of others who might have been competent to handle the matter,



meant that correspondence ended up on the desk of relatively junior people.

**(h) Other Shortcomings in Personnel Policy and Practice**

We have been struck by the discontinuity which was caused by persons being on annual leave. As in many other departments, annual leave in the Department of Justice, especially of senior staff, tends, we understand, to be bunched together around the period from the middle of July to the middle to end of August. This tendency, which mirrors what happens in the private sector, is probably inevitable given that persons are quite properly entitled to their annual leave and find that they can most easily take this in the period mentioned because Ministers are then likely to be on holiday and little Government business is done. In addition, the European Commission closes down completely. While we understand that efforts are made to ensure that the leave is broadly staggered in particular sections, the incidence of certain individuals being absent in succession in the Courts Division added to the problem.

There has been virtually no management development in the Department; this is clearly a significant shortcoming for someone who for example is responsible for Courts Division. Our earlier references to inexperienced people and poor handover mean that there is no succession planning in the Department.

**(i) Inadequacy of Information Technology Support**

We have made no systematic assessment of the IT in the Department of Justice but a couple of items mentioned to us are indicative of serious shortcomings. We understand, that there is no database for some very important areas of activity; that the IT system which processes the payroll of guards, prison officers and many others is under strain and that there is no librarian.

**(j) Human Error**

In the organisational context depicted above the likelihood of human error is high; accidents are bound to happen. Indeed it is a tribute to the staff of the Department that they handle so many routine and, especially, unique and unexpected transactions, under pressure, with so few errors.

The virtual inevitability of occasional serious failures in this context, however, does not mean that in the particular case under investigation certain individuals performed to the expected standard. The failures



recorded cannot be entirely explained away as being due to organisational and systems shortcomings. The first part of this report reveals in detail the vital 'moments of truth' when particular officials might have been expected to recognise the seriousness of the correspondence and to intervene, take the initiative and follow through to successful conclusion, but failed to do so.

In view of the many factors which contributed to the failure to communicate to Judge Lynch and the limitations inherent in an Inquiry of this nature, it would be unreasonable to expect us to attempt to assess the exact balance of responsibility between organisational influences on the one hand and individual human error on the other. In any case it would, in our opinion, be inequitable for us to apportion blame between individuals. We are not aware of the track record of the persons involved and we recommend that any assessment by management in the Department of the events described should be influenced by an individual's past performance. It could well be that a person who appears to have displayed shortcomings in this case has otherwise a track record of outstanding service to the Department.

Finally, any fair apportioning of blame would have to advert to not just present incumbents in all key positions but also to missed opportunities and failure to initiate change in the past.

### **Conclusion of Analysis**

Although this analysis is based on a mere week's work the Inquiry Team are confident of its essential accuracy because its findings are corroborated by the findings of the much more thorough assessment carried out by the *Working Group on a Courts Commission*. While the Working Group focussed primarily on administration within the Courts they also addressed relationships between the Courts and the Department of Justice and so their findings echo and reinforce ours, for example:

- There is no clear management structure with accountability and responsibility.
- There is no clear reporting structure with regular channels of communication between the various constituencies.
- There is poor understanding or implementation and lack of innovation in the use of information technology.

- CHAPTER 2
- Recommendations
- There is a lack of professional management to support any of the above requirements in the current structures.
  - There is apparent remoteness of the administrative systems from the judiciary.
  - There is an inadequate organisational relationship between the Department of Justice and Court staff. The result has been a lack of basic empowerment or decision-making.

### Summary

The implications of our Inquiry will already be fairly obvious from the foregoing. Nothing short of comprehensive transformation of the system is required. What happened in this case was a chapter of accidents, each of which reinforced the adverse effects of the others. There were, as we have outlined above, strong ameliorating factors which explain much of what occurred. However, there was also human error. We have considered whether, on the basis of the information which has been placed before us, we are able to assess the respective contribution of flaws in the system and human error. We are satisfied that, because of the short duration of the Inquiry and the speed with which it necessarily has had to be prepared, this is not possible. It is not possible either, and for reasons of equity and natural justice we would not consider it desirable, to attempt to allocate blame between individuals. However, we have to say that what happened was quite inexcusable.

These circumstances are unlikely to recur because of the dire consequences which have followed. We are concerned, nevertheless, from what we have learned about the Department that they might well occur again in some other section. This strongly confirms the need for changes in organisation and work practices, a topic to which we turn next.





## CHAPTER 3

# Recommendations

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The implications of our Inquiry will already be fairly obvious from the analysis. Nothing short of comprehensive transformation of the Department of Justice is called for. This will entail changes in structures, key administrative processes, IT support, skill base, personnel management, management disciplines, culture, financial management and external relationships and the confronting of poor performance.

In fairness to the staff of the Department it has to be noted that many of the changes called for have already been identified, prior to our Inquiry, in the work done under the Strategic Management Initiative. We have studied two substantial documents detailing work in progress on a Courts Division Action Plan and a Strategy Statement for the Department of Justice. The Courts Action Plan addresses such matters as the provision of a system which reflects the principle of 'value for money', delivery of a high quality of service to court users, expansion of IT in the Courts, staff development, mechanisms for enhancing relationships with the Judiciary and other progressive initiatives. At the level of the Department as a whole the documents of work-in-progress on Strategy clearly reveal that the Minister, Secretary and senior officials of the Department have been reflecting on the strengths and weaknesses of the Department, the challenges it faces and the need for major change. The document also lists some of the actions taken by the Department such as the publication of a *Prisons Strategy "The Management of Offenders"* (1994), the *Garda Síochána Corporate Strategy Policy Document 1993 — 1997*, the planned conversion of the Land Registry to a semi-state organisation and the work on a new unified Courts Service body.

The thinking reflected in these existing documents needs to be deepened; broadened to include more emphasis on organisational reform, as distinct from operational strategies, such as strategies for fighting crime; and injected with a greater sense of urgency and bias towards action.



Our recommendations note the areas we believe need to be addressed to build on the present platform of thinking and initiatives already in train.

**(a) *Establish a simple Fail-safe System for Delisting Judges from the Special Criminal Court Panel***

This should be a straightforward matter. Allowance should be made for circumstances where a judge might be involved in a case at the time of the Government decision to delist him/her and where the Court Registrar might want him/her to stay to the conclusion of the case. A strict process should be put in place which will allow adequate time for the decision to be communicated to the judge concerned and other interested persons, while putting an administrative limit on the time to confirm delisting.

**(b) *Institute a Comprehensive Redesign and Documentation of Procedures***

For a Department which deals with such sensitive issues the absence of written procedures constitutes a significant weakness. Today organisations in all sectors are radically redesigning their procedures to make them more efficient, more reliable, and 'user friendly'. Also they are documenting procedures, a discipline which is a vital requirement for securing an ISO quality-of-service certificate.

A priority among other systems to be strengthened is that pertaining to the registering, channelling and tracking of mail sent to the Minister.

Another system which was apparently in place some years ago, namely, the practice of circulating copies of Iris Oifigiuil to court officials, should be reinstated.

**(c) *Harness Information Technology***

Information technology is widely harnessed to support process/procedural reform. Within the Courts system and the Department of Justice as a whole there are numerous other ways in which technology support could improve efficiency and service, for example the development of legal and other data bases, expert systems which would allow for devolution of responsibility for



various transactions to front-line staff and improved telecommunications links. The Courts Division's existing Action Plan proposes several applications of IT in their domain.

**(d) *Redesign the Institutional Framework***

This would entail a thorough critique of the present scope of departmental activities to ascertain which activities should be kept within the Department in future and which should be managed at arms length through some form of agency, board, etc.. Are there any other activities that might be devolved in addition to those already mentioned, i.e. Prisons Board, Courts Service, Land Registry and Refugee Board, and, in general, how should policy-making functions be separated from agency type service activities?

**(e) *Set up Proper Structure for the Courts Division***

The Government has announced the setting up of a Courts Service which will operate at arms length from the Department.

Care will be required to create the right structure with support units such as Human Resources, IT and Finance; appropriate layers of management and supervision; and so forth. Also care will be required to avoid duplication of resources between the supervisory Department and the Courts Service.

**(f) *Develop a Managerial Ethos***

This is a challenge to other Departments, besides Justice. People holding positions of responsibility in the civil service have tended to concentrate on policy and the personal handling of day to day issues while neglecting, relatively speaking, their managerial responsibilities. These responsibilities include planning, developing and motivating staff, developing new processes and systems, establishing customer service levels, adapting structures, communicating internally and externally and so forth.

Towards this end there needs to be a sustained investment in management development; the institution of basic managerial processes, such as goal-setting and review, etc.; succession planning; establishment of performance management and



appraisal systems; the articulation of values and their propagation; and team building initiatives.

In passing we note that many of these recommended initiatives have been named and are being actively pursued as part of the next stage of the Government's *Strategic Management Initiative*, as spelt out in the recent document *Delivering Better Government*.

**(g) Significantly Strengthen Personnel Policy and Practice**

Several of the changes recommended in point (f) above, such as the performance management and appraisal system, must be extended beyond the managerial staff. Furthermore, matters such as patterns of annual leave, handover of jobs and staff induction, improving staff morale, stress management and other related personnel issues need to be addressed. Concretely, in the first instance, this will mean strengthening the Personnel Function and training line managers in 'people management'.

**(h) Confront Individuals who are deemed to have Failed**

Traditionally management in the public service tended to shy away from confronting individuals who have not performed adequately. While this has been changing we consider that in the current climate, where emphasis has to be given to greater efficiency and accountability in both the public and private sectors, failure has to be tackled much more firmly. We have given our view that there was human error in this case. Management must, therefore, examine the degree of culpability attaching to individuals and take appropriate action while having regard to established procedures and, as we have suggested earlier, the track record of individuals.

**(i) Identify and Act Upon Other Issues Needing Immediate Attention**

Apart from recommendations (a) and (h), i.e. to establish a system for delisting Judges from the Special Criminal Court panel and confronting poor performance, our other recommendations will have an impact in the medium to longer term. They constitute the agenda for a total transformation of the Department, a task that will take five years or more to accomplish. In the meantime there should be a quick trawl through all sections of the Department to

identify issues that need immediate attention and which if addressed may help to prevent further serious failures. Having identified the most serious of these matters project teams should be established, if necessary comprising internal and external resources, to make the required changes.

In summary, a multi-faceted programme of organisational development is required to address the failures which are the focus of the report and to prevent such failures in the future. This agenda will have to be pursued over a three-to-five year period to achieve the degree of reform and organisational effectiveness and stability that are required but in the immediate future steps should be taken to tackle obvious serious shortcomings.

In view of all that has been said in this Report and in the wider public arena over many years about the Department of Justice, this should be a defining moment for the Department. A number of factors or ingredients are critical to ensure a serious effort is implemented and recommendations and other reforms advocated here are followed.

*(a) Sustained Political Will*

The present and succeeding Governments will need to keep this issue high on their agenda, ensure that any Government has the political support for the reforms proposed.

*(b) Time Made Available by Department for Senior Management*

The extra resources needed will require senior management freedom from the day-to-day running of the Department and management to think about the changes and to lead the way ahead in greater detail than is possible in the normal day-to-day change.

That no time available if the Government is preoccupied with other issues and that the Department is preoccupied with day-to-day running. The Government should be preoccupied with a broad range of issues and the Department should be preoccupied with day-to-day running. The Government should be preoccupied with a broad range of issues and the Department should be preoccupied with day-to-day running.



It is necessary to identify the areas and their importance; identify issues that need immediate attention and which should be addressed to prevent further serious failures. Having identified the most serious of these matters, project teams should be established to deal with them as part of the Government initiative, to make the required changes.

In summary, a multi-faceted programme of organisational development is required to address the failures which are the focus of the report and to prevent such failures in the future. It will have to be pursued over a three to five year period to achieve the degree of reform and organisational effectiveness and stability that are required but in the immediate future steps should be taken to tackle obvious serious

as patterns of annual, half-yearly and job and other related issues that need to be addressed. In the first instance, this will mean strengthening the Personnel Function and training line managers in 'people management'.

#### (h) *Confront Individuals who are deemed to have Failed*

Traditionally management in the public service tended to shy away from confronting individuals who have not performed adequately. While this has been changing we consider that in the current climate, where emphasis has to be given to greater efficiency and accountability in both the public and private sectors, failure has to be tackled more firmly. We have given our view that there was human error in this case. Management must therefore examine the degree of culpability attaching to individuals and take appropriate action while having regard to established procedures and, as we have suggested earlier, the track record of individuals.

#### (i) *Identify and Act Upon Other Issues Requiring Immediate Attention*

Apart from recommendations (a) and (b) to establish a system for delisting Judges from the Judicial Council Court panel and confronting poor performance, the other recommendations will have an impact in the next 12 to 18 months. They constitute the agenda for a total transformation of the Department, a task that will take five years or more to accomplish. In the meantime there should be a quick trawl through all sections of the Department to

## CHAPTER 4

# Critical Success Factors

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If this Report were to be published and then left, after a flurry of activity, to gather dust it would not be the first time that such a fate befell a report such as this one.

In view of all that has been said in this Report and in the wider public arena over many years about the Department of Justice, this should be a defining moment for the Department. A number of factors or ingredients are critical to ensure a serious attempt to implement our recommendations and other reforms advocated elsewhere, as follows:

**(a) Sustained Political Will**

The present and succeeding governments will need to keep this issue high on their agenda and ensure adequate financial provision and political support for the reforms advocated.

**(b) Time Made Available by Department Senior and Middle Management**

The agenda recommended will require allowing management freedom from the 'hurly-burly' of day-to-day operations and crisis management to think about the issues raised, map out the way ahead in greater detail and manage the various proposals for change.

Making time available in the Department of Justice will be very difficult and here lies perhaps the nub of the problem: people are, so to speak, trapped on a treadmill of crisis management and responding to external pressures and unless they can get off that treadmill periodically the recommendations of this Inquiry and other policy development and strategic work will not be carried out.



**(c) External Support**

In all institutions, in every sector, reform from within is notoriously difficult. External support is needed for two reasons, firstly to provide extra 'pairs of hands' and expertise and, secondly, to challenge the assumptions and established practice of the Department. Outside assistance may come from elsewhere within the civil service or from the private sector. In our assessment the Department will be unable to carry out the scale of change needed without significant external help.

**(d) Openness on the Part of the Department**

The Department may resist or be open to the recommendations of this Report and to outside assistance. Based on what we have experienced at first hand in our meetings with staff and with staff representative associations we have every reason to believe that such openness and readiness to change will be forthcoming.

**(e) Do Not Reduce the Whole Issue to One of Staff Resources**

In the wider world of labour-intensive service organisations the consistent trend has been towards 'achieving more with less'. The key to such achievement lies in the streamlining of processes, the delegation of decision-making to front-line staff, multi-skilling, technology support and so forth. It may well be that additional resources, particularly more senior managerial resources, are needed to strengthen the Courts Division/Courts Service. However the new institutional arrangements turn out, there should not be a rush to add large numbers of additional people on a permanent basis. As stated already, the area will need assistance in the short term.

**(f) Teamwork at All Levels**

One of the most important outcomes of the Strategic Management Initiative so far has been the heightened focus on the need for policy and operational coherence in dealing with matters that transcend the boundaries of individual Departments. Well-known examples include the new interdepartmental structures set up to tackle drugs trafficking, children's issues and poverty. At all levels,

from the interdepartmental to service delivery and operations at the 'shop floor' the need for teamwork is acute. People need to look up from their own job and begin to support each other and collaborate on shared problems.

**(g) *External Review and Public Accountability***

On, say, a six-monthly basis progress on the changes and reforms advocated should be reviewed by an external person, for example from the Organisation, Management and Training Division of the Department of Finance, and a report given to the Minister for Justice.

**(h) *Urgency and a Bias for Action***

The same urgency that has been demonstrated recently with new initiatives in the Justice domain needs to be applied to reform of the Department of Justice itself. Within one month of this report the first significant moves to implement our recommendations should be clearly evident. Early movement and even small successes will build confidence among all concerned and will augur well for the success of the longer term reform effort.



**(c) External Support**

from the interdepartmental to service delivery and operations at the level of the individual. People need to look for their own job and begin to support each other and challenge the assumptions of the Department. Outside assistance from elsewhere within the Department, External Review and Public Accountability

On a six monthly basis progress on the changes and reforms should be reviewed by an external person, for example from the Organisation, Management and Training Division of the Department of Finance and a report given to the Minister for Justice.

The Department may resist or be open to the recommendations of this Report and to outside assistance. Based on what we have experienced at first hand in our own work, we believe that the Department should be open to the recommendations of this Report. Within one month of the report the Department should implement our recommendations. Early implementation and even small successes will build confidence among all concerned and will augur well for the success of the longer term changes.

The key to such achievement lies in the streamlining of processes, delegation of decision-making to front-line staff, technology support and so forth. It may well be that additional resources, particularly more senior managerial resources, are needed to strengthen the Courts Division. However the new institutional arrangements should not be a rush to add large numbers of additional people on a permanent basis. As stated already, the area will need assistance in the short term.

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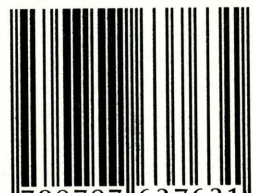
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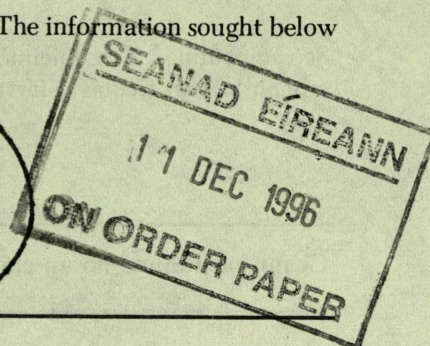
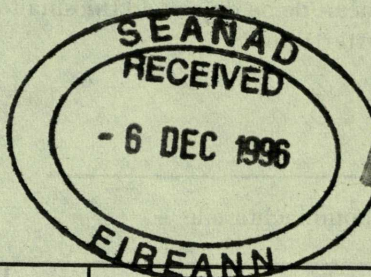
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DOCUMENT(S) TO BE LAID BEFORE HOUSE OF OIREACHTAS

Clerk of Seanad Éireann

I enclose copies\* of the undermentioned document(s) to be laid before the House. The information sought below is as set out.



Head of Department or other body  
5 December 1996

1. Department or other body laying document	Justice
2. Title of document .. .. .	Inquiry in the Department of Justice into the Delisting of Judge Dominic Lynch from the Special Criminal Court Panel
3. If laid pursuant to statute, state Title and section of Act .. .. .	-
4. Is there a statutory period in relation to the laying of the document? If so, give particulars .. .. .	-
5. Is a motion of approval necessary? .. .. .	No

\*Three copies of the document in respect of each House, or six copies where it is to be laid before one House only.



DOICIMÉAD/DOICIMÉID ATÁ LE LEAGAN FAOI BHRÁID THEACH DEN OIREACHTAS

Cléireach.....

Seo cóipeanna \* den doiciméad/de na doiciméid thiosluaite atá le leagan faoi bhráid an Tí. Is mar atá leagtha amach atá an t-eolas a iarrtar thíos.

Ceann na Roinne nó an chomhlachta eile

1. An Roinn nó an comhlacht eile atá ag leagan an doiciméid .. .. .	.....
2. Teideal an doiciméid .. .. .	.....
3. Más de bhun reachta atá an doiciméad á leagan, luaigh Teideal an Achta agus an t-alt .. .. .	.....
4. An mbaineann tréimhse reachtúil lena leagan?	.....
Má bhaineann, tabhair sonraí .. .. .	.....
5. An gá tairiscint á cheadú? .. .. .	.....

\*Trí chóip den doiciméad i leith gach Tí, nó sé chóip más faoi bhráid Tí amháin atá sé le leagan.

(Leagan Béarla lastall)